

EXHIBIT A

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22 G. David Jang, M.D.

23 UNITED STATES DISTRICT COURT
24 CENTRAL DISTRICT OF CALIFORNIA
25 EASTERN DIVISION - RIVERSIDE

26 G. DAVID JANG, M.D.,

27 Plaintiff,

28 v.

29 BOSTON SCIENTIFIC
30 CORPORATION, a Delaware
31 corporation; SCIMED LIFE SYSTEMS,
32 INC., a Minnesota corporation,

Case No. EDCV 05-00426 VAP (SGLx)

[PROPOSED] FIRST AMENDED
COMPLAINT AND DEMAND FOR
JURY TRIAL

Hon. Virginia A. Phillips

Trial Date: February 20, 2007

1
2 Defendants.

3 Plaintiff G. David Jang, M.D. ("Dr. Jang"), for his complaint against defendants
4 Scimed Life Systems, Inc. and Boston Scientific Corporation (collectively "the Boston
5 Scientific Parties"), alleges on personal knowledge as to all facts known to him, and
6 on information and belief as to all other facts, as follows:

7 **JURISDICTION AND VENUE**

8 1. This Court has jurisdiction pursuant to 28 U.S.C. § 1332(a), providing for
9 diversity jurisdiction in the United States district courts, because (1) Dr. Jang is a
10 citizen of the State of California, (2) Scimed Life Systems, Inc. is incorporated under
11 the laws of the State of Minnesota and maintains its principal place of business there,
12 (3) Boston Scientific Corporation is incorporated under the laws of the State of
13 Delaware and maintains its principal place of business in the State of Massachusetts,
14 and (4) the matter in controversy exceeds, exclusive of interest and costs, the sum of
15 seventy-five thousand dollars.

16 2. Venue is proper in this judicial district under 28 U.S.C. § 1391, because a
17 substantial part of the events or omissions giving rise to the claims asserted herein
18 occurred in this District.

19 **THE PARTIES**

20 3. Dr. Jang is an individual residing in the County of San Bernardino,
21 California. In 1965, Dr. Jang obtained his medical degree at the Korea University
22 College of Medicine in Seoul, Korea. He completed his residency in radiology and a
23 clinical fellowship in cardiovascular radiology at Harvard Medical School. He also
24 completed a residency in internal medicine at Loma Linda University Medical Center,
25 and a fellowship in cardiology at Stanford University Medical Center. Dr. Jang is a
26 member of the American College of Cardiology, the American Heart Association, the
27 American Medical Association, the Society of Cardiac Angiography, and the San
28 Bernardino County Medical Society. After teaching radiology as an instructor at

1 Harvard Medical School, Dr. Jang was appointed to the faculty at Loma Linda
 2 University School of Medicine, where he is presently a full professor of radiology and
 3 medicine. He has been practicing interventional cardiology at the Loma Linda
 4 University Medical Center since 1979, and continues to care for cardiology patients to
 5 this day. In 1999, Dr. Jang established a California S-corporation, "INVENCA," to
 6 facilitate his research and development of medical devices. In addition, the United
 7 States Patent and Trademark Office has issued approximately twenty-five patents to
 8 Dr. Jang in the fields of coronary balloon catheters and coronary stents. Dr. Jang has
 9 written a textbook entitled "Angioplasty," published by McGraw-Hill in 1985.

10 4. On information and belief, Defendant Boston Scientific Corporation
 11 ("BSC") is a corporation organized and existing under the laws of the State of
 12 Delaware, and maintains its principal place of business in the State of Massachusetts.

13 5. On information and belief, Defendant Scimed Life Systems, Inc.
 14 ("Scimed") is a corporation organized and existing under the laws of the State of
 15 Minnesota, and maintains its principal place of business there. Dr. Jang is further
 16 informed and believes that Scimed is a wholly-owned subsidiary of BSC.

17 6. On information and belief, each defendant was at all times herein
 18 mentioned the agent, representative, and alter ego of the other defendant, and as such
 19 was at all times herein mentioned acting within the purpose, course and scope of said
 20 agency, representation, and alter ego with the consent, permission and ratification of
 21 the other defendant.

22 GENERAL ALLEGATIONS

23 The Technology

24 7. When a patient suffers from a blocked coronary artery, doctors will often
 25 perform a balloon angioplasty. In that procedure, a small catheter carrying a deflated
 26 balloon is inserted through an artery in the patient's groin or arm. The catheter is
 27 navigated to the blocked artery in the patient's heart, and the balloon catheter is
 28 inflated, thereby dilating the blocked artery and compressing the plaque and other

1 substances against the walls of the artery. The balloon is then deflated and removed.
2 Balloon angioplasty has been the most prevalent non-invasive interventional treatment
3 for a blocked coronary artery, the alternative being bypass surgery.

4 8. To reduce the likelihood that a dilated artery will become blocked again
5 (a condition known as restenosis), or to clear a blockage that is so severe that balloon
6 angioplasty alone would not be sufficient, a coronary "stent" may be inserted into the
7 treated artery. A coronary stent is a flexible, mesh, metal tube that is inserted in the
8 artery in a compressed state. In addition to being used to perform balloon angioplasty,
9 balloon catheters are also used to deliver coronary stents to portions of a coronary
10 artery that are at risk for restenosis, where the balloon is inflated in order to shape the
11 stent to the contours of the inner walls of the artery. Once expanded, the stent remains
12 in the artery in an expanded state, even after the balloon has been deflated and
13 removed, thereby reducing the risk of restenosis in the vicinity of the stent. The risk
14 of restenosis is further reduced by "drug-eluting stents"—stents coated with drugs that
15 suppress the re-growth of cells that block coronary arteries. On average, coronary
16 stents are implanted in 80-90% of angioplasty procedures performed today.

17 Consequently, the coronary stent industry is a multi-billion-dollar per year endeavor.

18 9. Even when stents are used as part of the angioplasty procedure, balloon
19 catheters are used before any stent is inserted in order to "pre-dilate" a blocked artery,
20 and they are also used after a stent has already been put in place in order to "post-
21 dilate" the artery. Moreover, "stand-alone" balloon angioplasty is often performed
22 without the use of any stents. Balloons are also used, separate and apart from stents,
23 in order to treat "in-stent" restenosis, which occurs when the internal lumen of a
24 previously stented artery is re-clogged by the process of restenosis.

25 The Negotiations

26 10. Beginning in late 2000, negotiations commenced between Dr. Jang and
27 the Boston Scientific Parties regarding the acquisition by the Boston Scientific Parties
28 of the rights to the coronary stents and certain stent technology invented and patented

1 by Dr. Jang. Many of the negotiations took place between Dr. Jang, on his own
2 behalf, and Larry Best (then, Chief Financial Officer and Senior Vice President of
3 BSC and Scimed, and now CFO and Executive Vice President of the Boston Scientific
4 Parties) and Doug Godshall (then, Director of New Business Development for BSC,
5 focusing on cardiology, and now BSC's Vice President of New Product
6 Development), on behalf of the Boston Scientific Parties. Best and Godshall
7 represented to Dr. Jang that they had the authority to negotiate such an agreement on
8 behalf of the Boston Scientific Parties.

9 11. During the course of the negotiations, Dr. Jang specifically asked Messrs.
10 Best and Godshall whether the Boston Scientific Parties were interested in also
11 acquiring the rights to the separate balloon catheter technology pioneered and patented
12 by Dr. Jang. They responded that the Boston Scientific Parties were only interested in
13 acquiring the rights to Dr. Jang's coronary stent technology and patents.

14 12. Consistent with these discussions, Dr. Jang and BSC (acting through
15 Best) signed a term sheet on March 14, 2001, setting forth certain terms that the
16 parties had agreed upon for BSC's acquisition of the rights to Dr. Jang's coronary
17 stent technology and patents (the "Term Sheet"). No mention was made anywhere in
18 the Term Sheet, which outlined the terms of the transaction that the parties had agreed
19 upon, of Dr. Jang's separate balloon catheter technology or patents. Moreover, the
20 Boston Scientific Parties neither paid nor promised to pay Dr. Jang anything for the
21 rights to his balloon catheter technology and patents (as opposed to his coronary stent
22 technology and patents). A true and correct copy of the Term Sheet is attached hereto
23 as Exhibit 1 and incorporated herein by reference.

24 The Agreements

25 13. On or about May 4, 2001, Dr. Jang and BSC entered into an option
26 agreement (the "Option Agreement") that gave BSC one year in which to evaluate,
27 and determine whether it wished to acquire, the rights to Dr. Jang's coronary stent
28 technology and patents. The Option Agreement stated that if BSC wished to acquire

1 the rights to Dr. Jang's coronary stent technology and patents, the parties would enter
2 into an assignment agreement and a part-time employment agreement, drafts of which
3 were attached to the Option Agreement. A true and correct copy of the Option
4 Agreement is attached hereto as Exhibit 2 and incorporated herein by reference.

5 14. On or about May 1, 2002, BSC sent Dr. Jang a notice that it had, on April
6 29, 2002, assigned to Scimed all of BSC's rights and obligations under the Option
7 Agreement. The notice also stated that Scimed was electing to exercise the option to
8 acquire the rights to Dr. Jang's coronary stent technology and patents.

9 15. On June 3, 2002, Dr. Jang entered into an assignment agreement with
10 Scimed (the "Assignment Agreement") and a part-time employment agreement with
11 BSC (the "Employment Agreement"), copies of which are attached hereto as Exhibits
12 3 and 4, respectively, and incorporated herein by reference. At the same time, Dr.
13 Jang executed contemporaneously therewith a notarized Patent Assignment ("Patent
14 Assignment"), a Bill of Sale and Assignment ("Bill of Sale and Assignment"), and a
15 Non-Qualified Stock Option Agreement ("Non-Qualified Stock Option Agreement").
16 Copies of the Patent Assignment and of the Bill of Sale and Assignment are attached
17 hereto as Exhibits 5 and 6, respectively, and incorporated herein by reference.
18 Hereinafter, the June 3, 2002 Assignment Agreement, Employment Agreement, Patent
19 Assignment, Bill of Sale and Assignment, and Non-Qualified Stock Option
20 Agreement shall be referred to as the "Transaction Documents."

21 16. Under the Assignment Agreement, Dr. Jang agreed to assign to Scimed
22 the rights to his coronary stent technology and patents, which he did on or about
23 June 3, 2002. The coronary stent patents and designs assigned by Dr. Jang to Scimed
24 are set forth on the schedules attached to the Assignment Agreement. Consistent with
25 the parties' intent and negotiations, the schedules of assigned technology and patents
26 do not include any coronary balloon catheters or balloon patents, nor does the
27 Assignment Agreement, Patent Assignment, or Bill of Sale and Assignment anywhere
28 provide for the assignment to Scimed of the rights to Dr. Jang's separate balloon

1 catheter technology and patents. Indeed, Exhibit C to the Employment Agreement,
2 which was executed contemporaneously with the Assignment Agreement and is
3 specifically integrated into the Assignment Agreement by the terms of the Assignment
4 Agreement, specifically notes that Dr. Jang's coronary balloon catheters and patents
5 are his prior inventions and that any improvements to those patents and designs
6 developed by Dr. Jang will belong to him.

7 17. As consideration for the assignment of the rights to Dr. Jang's coronary
8 stent technology and patents, the Assignment Agreement requires Scimed to pay Dr.
9 Jang up to \$160 million (the same amount provided for in the Term Sheet), based on
10 revenues from the sale of products developed by the Boston Scientific Parties that
11 incorporate Dr. Jang's coronary stent technology or patents (defined in the
12 Assignment Agreement as "Contingent Payment Products"). More specifically, the
13 Assignment Agreement provides for an up-front payment of \$50 million, followed by
14 10% royalty payments on Contingent Payment Products (capped at \$60 million), plus
15 an additional payment of \$50 million if worldwide sales of Contingent Payment
16 Products reach or exceed \$2.5 billion within five years of the first commercial sale of
17 such products in the United States. The Assignment Agreement refers to payments
18 based on sales of Contingent Payment Products as the "Earn Out." Finally, the
19 Assignment Agreement provides for a \$10 million payment (to be credited against the
20 \$60 million cap on Earn Out payments) to be paid to Dr. Jang if the Boston Scientific
21 Parties fail to obtain a European CE Mark on a Contingent Payment Product within
22 two years of entering into the Assignment Agreement.

23 18. Defendants' "Express," "TAXUS Express" (BSC's drug-coated version
24 of Express), "Liberté," and the drug-coated version of Liberté coronary stent products
25 constitute Contingent Payment Products. According to BSC's annual reports,
26 worldwide sales of Express and Liberté coronary stent products (including the drug-
27 coated versions) by the Boston Scientific Parties have exceeded \$2.5 billion since the
28 first commercial sale in the U.S. Thus, sales of Contingent Payment Products by the

1 Boston Scientific Parties have generated sufficient revenue to trigger Scimed's 10%
2 royalty obligation (easily reaching the \$60 million cap) and triggering the \$50 million
3 payment for achieving worldwide sales of \$2.5 billion. Nevertheless, to date, Scimed
4 has made only the \$50 million initial payment due under the Assignment Agreement,
5 plus a \$10 million payment on June 2, 2004.

6 19. Additionally, contrary to the parties' intent—as expressed in the Term
7 Sheet, the negotiations, and the Transaction Documents—the Boston Scientific Parties
8 are wrongfully asserting an ownership interest in the rights to Dr. Jang's coronary
9 balloon catheter technology and patents.

10 **FIRST CLAIM FOR RELIEF**

11 **(Rescission of the Transaction Documents**
12 **Against All Defendants)**

13 20. Dr. Jang specifically realleges and incorporates herein by reference each
14 and every allegation contained in paragraphs 1 through 19 hereof.

15 21. As a first ground for rescission of the Transaction Documents, Dr. Jang
16 pleads failure of consideration or material breach by the Boston Scientific Parties.
17 The up-to \$160 million that Dr. Jang is entitled to receive from the Boston Scientific
18 Parties under the Assignment Agreement was the most important consideration and
19 inducement for Dr. Jang to execute the Transaction Documents. By failing and
20 refusing to pay Dr. Jang \$100 million that Dr. Jang in fact earned out of the \$160
21 million in total payment obligations that Scimed has under the Assignment
22 Agreement, and by allowing such failure of performance or material breach to occur,
23 the Boston Scientific Parties have deprived Dr. Jang of the very essence of his bargain
24 under the Assignment and Employment Agreements and the rest of the Transaction
25 Documents. Accordingly, both of these Agreements, the rest of the Transaction
26 Documents and the obligations imposed thereby should be rescinded in their entirety,
27 and the parties restored to their *status quo ante* positions.

1 22. The Assignment Agreement cannot, and should not, be interpreted to
2 include within its scope Dr. Jang's balloon catheter technology. As the Boston
3 Scientific Parties knew at the time the Transaction Documents were signed, it was
4 never Dr. Jang's intention to convey any rights to his balloon catheter technology. If,
5 however, the Assignment Agreement is determined to require the assignment to
6 Scimed of the rights to Dr. Jang's balloon catheter technology and patents, then Dr.
7 Jang pleads, as a second and alternative ground for rescission of the Transaction
8 Documents, mistake with respect to whether the Transaction Documents require Dr.
9 Jang to assign the rights to his balloon catheter technology and patents (and
10 improvements thereon) to the Boston Scientific Parties. When he signed the
11 Transaction Documents in June 2002, Dr. Jang believed, through no fault or neglect of
12 his own, and based upon express statements made by the Boston Scientific Parties,
13 that the Transaction Documents required him to assign to the Boston Scientific Parties
14 only the rights to his coronary stent technology and patents (and certain pacemaker
15 technology), but not also the rights to his balloon catheter technology and patents. If
16 such belief was mistaken, any such mistake would have been material to Dr. Jang's
17 decision to sign the Transaction Documents, as Dr. Jang would not have signed them
18 as they were drafted had he believed that it gave the Boston Scientific Parties rights to
19 his balloon catheter technology and patents. The Boston Scientific Parties, through
20 their agents Best and Godshall, knew of, should have known, or caused any such
21 mistake because they represented to Dr. Jang that the Boston Scientific Parties did not
22 wish to acquire the rights to Dr. Jang's balloon catheter technology and patents and
23 were not going to pay for them. Even if the Boston Scientific Parties were not aware
24 of, or had not caused, any such mistake, it would be unconscionable and unfair under
25 the circumstances to enforce the Assignment Agreement and Employment Agreement
26 as the Boston Scientific Parties contend they should be read.

23. By way of service of this complaint, Dr. Jang hereby provides notice of rescission and offers to restore to the Boston Scientific Parties all consideration received by Dr. Jang under the Transaction Documents.

24. Dr. Jang further seeks restitution of all benefits conferred upon the Boston Scientific Parties under the Transaction Documents.

(ALTERNATIVE) SECOND CLAIM FOR RELIEF

(Reformation of the Transaction Documents Against All Defendants)

25. Dr. Jang specifically realleges and incorporates herein by reference each and every allegation contained in paragraphs 1 through 24 hereof.

26. If the Assignment Agreement does require the assignment to Scimed of not only the rights to Dr. Jang's coronary stent technology and patents, but also the rights to Dr. Jang's balloon catheter technology and patents, then Dr. Jang pleads, as a first ground for reformation of the Transaction Documents, mistake with respect to whether the Transaction Documents require Dr. Jang to assign the rights not only to certain of his coronary stent technology and patents, but also his balloon catheter technology and patents (and improvements thereon), to the Boston Scientific Parties. When he signed the Transaction Documents in June 2002, Dr. Jang believed, through no fault or neglect of his own, and continues to believe in good faith to this day, that the Transaction Documents require him to assign to the Boston Scientific Parties only the rights to certain of his coronary stent technology and patents, and not also the rights to his balloon catheter technology and patents. If such belief was mistaken, such mistake would have been material to Dr. Jang's decision to sign the Transaction Documents, as Dr. Jang would not have signed them as they were drafted had he believed that it gave the Boston Scientific Parties rights to his balloon catheter technology and patents. The Boston Scientific Parties, through at least their agents Best and Godshall, knew of, should have known, or caused any such mistake because they expressly represented to Dr. Jang that the Boston Scientific Parties did not wish

1 to acquire the rights to Dr. Jang's balloon catheter technology and patents and were
2 unwilling to pay for such additional technology and patents.

3 27. If the definitions of "Design(s)" and "Technology" in Section 1.1 of the
4 Assignment Agreement and/or the provisions of Section 2.1 of the Assignment
5 Agreement ("Assignment of Technology") are determined to include the rights to any
6 of Dr. Jang's balloon catheter technology and patents, then Dr. Jang specifically
7 pleads that these provisions of the Assignment Agreement do not reflect what the real
8 agreement between the parties was, and should be reformed to specifically state that
9 balloon catheter technology and patents are excluded from the scope of the assignment
10 in order to embody the parties' actual agreement (an assignment of rights to certain of
11 Dr. Jang's coronary stent technology and patents). If Section 1.2 ("Exclusive Services
12 in Area") and/or Section 5.2 ("Work Product Assignment") of the Employment
13 Agreement are determined to require the assignment of rights to any of Dr. Jang's
14 balloon catheter technology and patents, then Dr. Jang specifically pleads that these
15 provisions of the Employment Agreement do not reflect what the real agreement
16 between the parties was, and should be reformed to specifically state that balloon
17 catheter technology and patents are excluded from the scope of the assignment in
18 order to embody the actual agreement of the parties (an assignment of rights to certain
19 of Dr. Jang's coronary stent technology and patents). If any provisions of the Patent
20 Assignment, Bill of Sale and Assignment, and/or any of the other Transaction
21 Documents are determined to require the assignment of rights to any of Dr. Jang's
22 balloon catheter technology and patents, then Dr. Jang specifically pleads that these
23 provisions do not reflect the real agreement between the parties, and any such
24 documents should be reformed to specifically state that balloon catheter technology
25 and patents are excluded from the scope of the assignment in order to embody the
26 parties' actual agreement (an assignment of rights to certain of Dr. Jang's coronary
27 stent technology and patents).

28

(ALTERNATIVE) THIRD CLAIM FOR RELIEF

(Breach of Contract Against Scimed)

28. Dr. Jang specifically realleges and incorporates herein by reference each and every allegation contained in paragraphs 1 through 27 hereof.

29. The Assignment Agreement is a written agreement between Dr. Jang and Scimed.

30. Dr. Jang has performed all of the covenants, conditions, and promises to be performed on his part under the Assignment Agreement, with the exception of any obligations the performance of which has been excused by Scimed's breach of the Assignment Agreement.

31. Scimed has breached the Assignment Agreement by failing to pay Dr. Jang approximately \$100 million of the \$160 million in payments to which Dr. Jang is entitled under the Assignment Agreement from the Boston Scientific Parties' sale of Contingent Payment Products, even though the Express and Liberté coronary stent products (including the drug-coated versions thereof) constitute Contingent Payment Products and have generated sufficient revenue to trigger Scimed's Earn Out and other payment obligations under the Assignment Agreement.

32. As a direct and proximate result of Scimed's breach of the Assignment Agreement, Scimed has inflicted damage upon Dr. Jang in an amount to be determined at trial, but not less than \$100,000,000.

FOURTH CLAIM FOR RELIEF

(Breach of Fiduciary Duty Against All Defendants)

33. Dr. Jang specifically realleges and incorporates herein by reference each and every allegation contained in paragraphs 1 through 32 hereof.

34. Dr. Jang entrusted his coronary stent technology and ideas for improvements thereon to the Boston Scientific Parties under an exclusive arrangement whereby the Boston Scientific Parties agreed to develop, patent or maintain the patents on, and commercially exploit, Dr. Jang's technology and ideas, in return for royalties

1 to be paid to Dr. Jang. As a result of this arrangement, a confidential or fiduciary
2 relationship existed between Dr. Jang and the Boston Scientific Parties in connection
3 with the Assignment Agreement and Employment Agreement and the rest of the
4 Transaction Documents.

5 35. The Boston Scientific Parties breached the fiduciary duties they owed Dr.
6 Jang through several acts of overreaching and unfair conduct, including misleading
7 Dr. Jang, making false promises to Dr. Jang regarding the Boston Scientific Parties'
8 intentions with respect to his balloon catheter technology and patents, withholding Dr.
9 Jang's rightful share of the revenues generated from the sale of Contingent Payment
10 Products, falsely denying that their stents utilized Dr. Jang's stent technology, and
11 attempting to claim as their own, and to prevent Dr. Jang from marketing, the balloon
12 catheter technology that he invented and developed on his own time and using his own
13 resources. If the Assignment Agreement is determined to require Dr. Jang to assign to
14 the Boston Scientific parties the rights to his balloon catheter technology and patents,
15 then the Boston Scientific Parties also breached their fiduciary duty to Dr. Jang by
16 entering into the Assignment Agreement knowing that Dr. Jang had no intention of
17 conveying rights in his balloon catheter technology and patents, and by taking
18 advantage of Dr. Jang's evident belief that it did not do so.

19 36. As a direct and proximate result of the Boston Scientific Parties' breaches
20 of the fiduciary duties they owed Dr. Jang, Dr. Jang has been or will be damaged in an
21 amount to be proven at trial.

22 37. In doing the acts hereinabove alleged, the Boston Scientific Parties acted
23 reprehensibly and in bad faith, with oppression, fraud and/or malice, entitling Dr. Jang
24 to recover punitive damages in an amount appropriate to punish defendants and to
25 deter them from engaging in similar misconduct in the future.
26
27
28

(ALTERNATIVE) FIFTH CLAIM FOR RELIEF**(Declaratory Judgment Against All Defendants)**

38. Dr. Jang specifically realleges and incorporates herein by reference each and every allegation contained in paragraphs 1 through 37 hereof.

39. Dr. Jang contends that neither the Assignment Agreement nor any of the other Transaction Documents requires him to assign to Scimed any of his balloon catheter technology and patents (and any improvements thereto), whereas the Boston Scientific Parties contend that the Assignment Agreement does require him to do so. Therefore, an actual controversy has arisen and now exists with respect to whether the Assignment Agreement (or any of the other Transaction Documents) requires Dr. Jang to assign to Scimed the rights to his balloon catheter technology and patents (and any improvements thereto).

40. Dr. Jang requests that the Court issue a declaratory judgment clarifying the rights and obligations of the parties under the Assignment Agreement and the rest of the Transaction Documents with respect to Dr. Jang's balloon catheter technology and patents.

PRAYER

WHEREFORE, Dr. Jang prays for the following relief:

1. That the Court enter judgment in favor of Dr. Jang and against the Boston Scientific Parties;
2. An order rescinding the Transaction Documents, and compelling the Boston Scientific Parties to make restitution to Dr. Jang of all benefits conferred upon them as a result of the Transaction Documents;
3. In the alternative, an order reforming the Transaction Documents and clarifying that Dr. Jang is not required to assign the rights to his balloon catheter technology or patents to either of the Boston Scientific Parties, and that the Boston Scientific Parties have no rights to any such technology or patents;

4. In the alternative, that Dr. Jang be awarded monetary damages and other relief sufficient to compensate him for Scimed's breaches of the Assignment Agreement;
5. That Dr. Jang be awarded monetary damages and other relief sufficient to compensate him for the Boston Scientific Parties' breaches of the fiduciary duties that they owed Dr. Jang;
6. A judicial declaration that neither the Assignment Agreement nor any of the other Transaction Documents requires him to assign to Scimed his balloon catheter technology and patents (and any improvements thereto).
7. For punitive damages in an amount sufficient to punish and deter the Boston Scientific Parties;
8. Such other and further relief as this Court may deem just and appropriate.

DATED: March 3, 2006

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Thomas C. Mundell

By: 

Wayne M. Barsky

Attorneys for Plaintiff, G. David Jang, M.D.

DEMAND FOR JURY TRIAL

Dr. Jang demands a trial by jury on all issues so triable.

DATED: March 3, 2006

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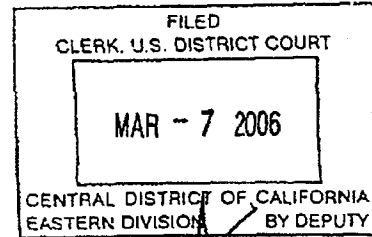
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EXHIBIT B

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 G. David Jang, M.D.

UNITED STATES DISTRICT COURT
 CENTRAL DISTRICT OF CALIFORNIA
 EASTERN DIVISION - RIVERSIDE

LOGGED

G. DAVID JANG, M.D.,
 Plaintiff,

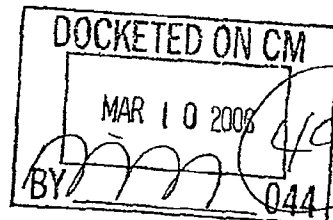
Case No. EDCV 05-00426 VAP (SGLx)

STIPULATION AND [PROPOSED]
 ORDER ALLOWING PLAINTIFF TO
 FILE AN AMENDED COMPLAINT

BOSTON SCIENTIFIC
 CORPORATION, a Delaware
 corporation; SCIMED LIFE SYSTEMS,
 INC., a Minnesota corporation,
 Defendants.

Hon. Virginia A. Phillips

Trial Date: February 20, 2007



Stipulation And [Proposed] Order Allowing Plaintiff To File An Amended Complaint

BSC-C 0162440

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19 Attorneys for Defendants,

20 Boston Scientific Corporation and

21 SciMed Life Systems, Inc.

22 ///

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24 ///

25 ///

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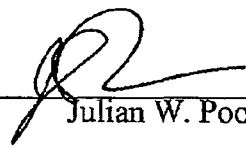
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1 It is hereby stipulated by and between the parties hereto through their respective
2 counsel of record that Plaintiff G. David Jang, M.D. ("Dr. Jang") be permitted to file
3 an Amended Complaint, an original and one copy of which is filed concurrently
4 herewith pursuant to Local Rule 15-1.

5
6 DATED: March 3, 2006

7 GIBSON, DUNN & CRUTCHER LLP
8 Wayne M. Barsky
9 Michael A. Sitzman
10 Julian W. Poon

11 MUNDELL, ODLUM & HAWS, LLP
12 Thomas C. Mundell

13 By:  _____
14 Julian W. Poon

15 Attorneys for Plaintiff, G. David Jang, M.D.

16 DATED: March __, 2006

17 HOWREY LLP
18 Sandra Smith Thayer
19 Matthew M. Wolf
20 Edward Han
21 John Nilsson

22 By: _____
23 Sandra Smith Thayer

24 Attorneys for Defendants,
25 Boston Scientific Corporation and
26 SciMed Life Systems, Inc.

1 It is hereby stipulated by and between the parties hereto through their respective
2 counsel of record that Plaintiff G. David Jang, M.D. ("Dr. Jang") be permitted to file
3 an Amended Complaint, an original and one copy of which is filed concurrently
4 herewith pursuant to Local Rule 15-1.

5
6 DATED: March __, 2006

7 GIBSON, DUNN & CRUTCHER LLP
8 Wayne M. Barsky
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12 Thomas C. Mundell

13 By: _____
14 Julian W. Poon

15 Attorneys for Plaintiff, G. David Jang, M.D.

16 DATED: March 3, 2006

17 HOWREY LLP
18 Sandra Smith Thayer
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20 Edward Han
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23 Sandra Smith Thayer

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25 Boston Scientific Corporation and
26 SciMed Life Systems, Inc.

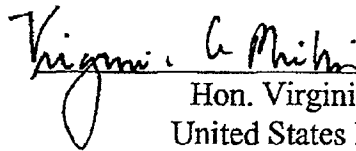
[PROPOSED] ORDER

Based upon the stipulation of counsel for the parties, and good cause appearing,
IT IS HEREBY ORDERED as follows:

1. Plaintiff is granted leave to file the Amended Complaint that was lodged
with the Court with this Stipulation and [Proposed] Order. Pursuant to Local Rule
15-3, Plaintiff's Amended Complaint is deemed served upon Defendants in this action
as of the date of this Order.

2. Defendants are given ten (10) days from the date of this Order to respond
to Plaintiff's Amended Complaint.

DATED: March 7, 2006



Hon. Virginia A. Phillips
United States District Judge

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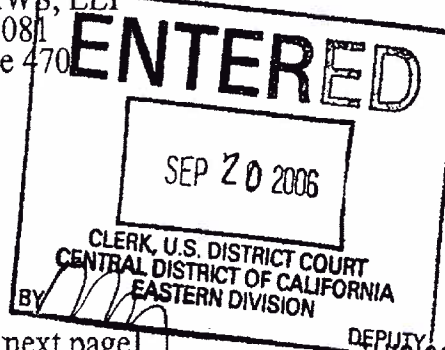
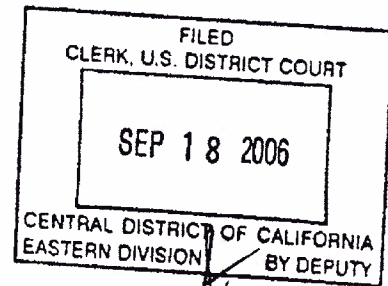
EXHIBIT C

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Attorneys for Plaintiff,
 G. David Jang, M.D.

[Additional counsel listed on next page]



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UNITED STATES DISTRICT COURT
 CENTRAL DISTRICT OF CALIFORNIA
 EASTERN DIVISION - RIVERSIDE

G. DAVID JANG, M.D.,

Plaintiff,

v.

BOSTON SCIENTIFIC CORPORATION,
 a Delaware Corporation; SCIMED LIFE
 SYSTEMS, INC., a Minnesota
 Corporation,

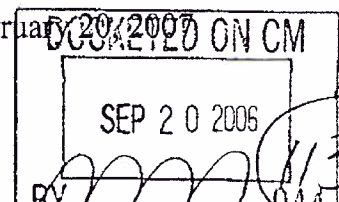
Defendants.

Case No. EDCV 05-00426 VAP (CTx)

**STIPULATION AND [PROPOSED]
 ORDER: (1) GRANTING PARTIAL
 SUMMARY JUDGMENT AGAINST
 PLAINTIFF ON PLAINTIFF'S
 THIRD CLAIM FOR RELIEF FOR
 BREACH OF CONTRACT AGAINST
 DEFENDANT SCIMED LIFE
 SYSTEMS, INC., AND (2)
 DISMISSING WITHOUT
 PREJUDICE DEFENDANTS' FIRST
 AND SECOND COUNTERCLAIMS**

The Honorable Virginia A. Phillips

Trial Date: February 20, 2007



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7 Matthew M. Wolf (*pro hac vice*)
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9 John E. Nilsson (*pro hac vice*)
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15 Wolfm@howrey.com
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18 Attorneys for Defendants,
19 Boston Scientific Corporation and
20 Scimed Life Systems, Inc.
21
22
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1 Plaintiff G. David Jang, M.D. ("Dr. Jang") and Defendants Boston Scientific
2 Corporation ("BSC") and Scimed Life Systems, Inc. ("Scimed") hereby stipulate and
3 agree, by and through their undersigned counsel of record, subject to the terms set
4 forth below, including but not limited to the preservation of Dr. Jang's right of appeal,
5 and further subject to the approval of this Court, that an order should be entered (1)
6 granting partial summary judgment against Dr. Jang and in favor of Scimed on Dr.
7 Jang's Third Claim for Relief for Breach of Contract against Scimed, and (2)
8 dismissing without prejudice Defendants' First and Second Counterclaims as moot. In
9 support of their Stipulated Motion, the parties state as follows:

10 1. On or about March 3, 2006, Dr. Jang filed a First Amended Complaint
11 and Demand For Jury Trial (the "Complaint") against BSC and Scimed. Dr. Jang's
12 Complaint states five claims for relief, including a Third Claim for Relief for breach of
13 contract against Scimed.

14 2. Dr. Jang's Third Claim for Relief alleges, among other things, that
15 "Scimed has breached the Assignment Agreement by failing to pay Dr. Jang
16 approximately \$100 million of the \$160 million in payments to which Dr. Jang is
17 entitled under the Assignment Agreement from the Boston Scientific Parties' sale of
18 Contingent Payment Products, even though the Express . . . coronary stent products
19 (including the drug-coated versions thereof) constitute Contingent Payment Products
20 and have generated sufficient revenue to trigger Scimed's Earn Out and other payment
21 obligations under the Assignment Agreement." Complaint, ¶ 31.

22 3. Under the Assignment Agreement, the question of whether Express stents
23 are Contingent Payment Products, and thus whether Scimed has breached the
24 Assignment Agreement by failing to make payments to Dr. Jang based upon sales of
25 Express stents, depends on whether the "development, manufacture, use, or sale" of
26 the Express stent is "covered by one or more Valid Claims of the Patents in the
27 jurisdiction in which such stent is manufactured or sold or which, but for the
28 assignment made pursuant to this Agreement, would infringe one of more Valid

1 Claims of the Patents.” Complaint, Exh. 3-033. Stated differently, in order for Dr.
2 Jang to prove that Scimed has breached the Assignment Agreement, Dr. Jang must
3 prove that, absent the Assignment Agreement (under which he assigned several of his
4 patents to Scimed), the Express stent would infringe one or more valid claims of the
5 patents assigned by Dr. Jang to Scimed.

6 4. On or about March 20, 2006, Defendants filed an Answer to Dr. Jang’s
7 Complaint and also asserted several counterclaims against Dr. Jang. Defendants’ first
8 and second counterclaims are styled “Declaratory Judgment Of Non-Infringement” and
9 “Declaratory Judgment Regarding ‘Contingent Payment Products,’” respectively, and
10 turn on the same patent-coverage or infringement issues as does Dr. Jang’s breach of
11 contract claim against Scimed.

12 5. During discovery, Dr. Jang identified several claims in two U.S. patents
13 (U.S. Patent Nos. 5,922,021 and 5,954,743) that he believes cover the Express stent.
14 Accordingly, and after significant briefing on the issue by both parties, the Court held
15 a claim construction (Markman) hearing on May 30, 2006 to construe several terms
16 contained in the patent claims at issue.

17 6. On or about August 24, 2006, the Court issued a Claim Construction
18 Order (“the Order”), which the parties received on August 28, 2006. Plaintiff Dr. Jang
19 believes that the Court’s Order is incorrect in several fundamental respects, and he
20 intends to seek appellate review of the Court’s Order in the appropriate appellate court.
21 Nonetheless, the parties agree that, under the Court’s existing Claim Construction
22 Order, Dr. Jang cannot prove that the Express stent is covered by any claims of U.S.
23 Patent Nos. 5,922,021 and 5,954,743, and therefore cannot prove that Scimed breached
24 the Assignment Agreement with respect to those patents.

25 7. Accordingly, in order to conserve the resources of both the parties and the
26 Court, *see, e.g., York Prods., Inc. v. Central Tractor Farm & Family Ctr.*, 99 F.3d
27 1568, 1571 (Fed. Cir. 1996), the parties hereby stipulate and agree, subject to the
28 approval of this Court, and further subject to the full and complete preservation of Dr.

1 Jang's right to appeal the Order, that an order of partial summary judgment should now
2 be entered against Dr. Jang and in favor of Scimed on Dr. Jang's Third Claim for
3 Relief for Breach of Contract against Scimed. Similarly, because the Defendants' first
4 and second counterclaims are now moot, the parties also stipulate and agree, subject to
5 the approval of this Court, that an order should be entered dismissing those
6 counterclaims without prejudice.

7 8. This Stipulation is wholly predicated on Dr. Jang's right to obtain appellate
8 review of the Court's Claim Construction Order. By entering into this Stipulation, the
9 parties agree that Dr. Jang is *not waiving*, but rather is *expressly reserving*, his right to
10 obtain appellate review of the Court's Claim Construction Order and to proceed further
11 with his Third Claim for Relief on remand from the Court of Appeals should the Court
12 of Appeals reverse or vacate this Court's Claim Construction Order in whole or in part.
13 Indeed, Dr. Jang's right to appeal the Court's Claim Construction Order is an *essential*
14 *condition* of this Stipulation, and if the Court does not agree that Dr. Jang is *fully*
15 *preserving all of his rights to obtain appellate review of the Claim Construction Order*,

16 ///

17 ///

18 ///

1 then Dr. Jang does not consent to the entry of an order granting partial summary
2 judgment against him on his Third Claim for Relief and requests that the Court reject
3 this Stipulation.

4
5 Respectfully submitted,

6 Dated: September 12, 2006

GIBSON, DUNN & CRUTCHER LLP

7
8 By: Wayne M. Barsky
9 Wayne M. Barsky
10 Attorneys for Plaintiff,
11 G. David Jang, M.D.

12 Dated: September 12, 2006

HOWREY LLP

13
14
15 By: Matthew M. Wolf
16 Matthew M. Wolf

17 Attorneys for Defendants,
18 Boston Scientific Corporation and
19 Scimed Life Systems, Inc.
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3 this Stipulation.

4
5 Respectfully submitted,

6 Dated: September __, 2006

GIBSON, DUNN & CRUTCHER LLP

7
8
9 By: Wayne M. Barsky

10 Attorneys for Plaintiff,
11 G. David Jang, M.D.

12 Dated: September 12th, 2006

HOWREY LLP

13
14
15 By: Matthew Wolf (by permission by JEN)
Matthew M. Wolf

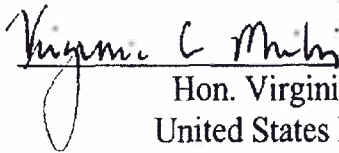
16 Attorneys for Defendants,
17 Boston Scientific Corporation and
18 Scimed Life Systems, Inc.
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[PROPOSED] ORDER

Having considered the parties' foregoing Stipulation (1) Granting Partial Summary Judgment Against Plaintiff on Plaintiff's Third Claim for Relief for Breach of Contract Against Defendant Scimed Life Systems, Inc., and (2) Dismissing Without Prejudice Defendants' First and Second Counterclaims as moot, and good cause appearing to exist, IT IS SO ORDERED.

Specifically, in accordance with the terms of the foregoing stipulation, the Court grants partial summary judgment against Dr. Jang and in favor of Scimed on Dr. Jang's Third Claim for Relief for Breach of Contract. The Defendants' First and Second Counterclaims are accordingly moot, and are dismissed without prejudice. Entry of this Order does not waive or compromise Dr. Jang's right to obtain appellate review of the Court's Claim Construction Order and, if the Court's Claim Construction Order is reversed or vacated in part on appeal, to proceed further with his Third Claim for Relief on remand from the Court of Appeals.

Dated: September 18, 2006



Hon. Virginia A. Phillips
United States District Judge

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